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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

10 DERRICK KIRKWOOD,

11 Petitioner,

12 v.

13 PAT GLEBE,

14 Respondent.

No. C09-5593 RBL/KLS

ORDER

15 This habeas corpus action has been referred to United States Magistrate Judge Karen L.  
16 Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Derrick Kirkwood  
17 filed this action under 28 U.S.C. § 2254 challenging his 2001 conviction. Respondent filed an  
18 Answer and relevant portions of the record. Dkts. 13 and 14. Respondent argues that the  
19 petition is untimely and barred by the statute of limitations under 28 U.S.C. § 2244(d) and Fed.  
20 R. Civ. P. 12(b)(6). Petitioner filed his response, claiming that the Respondent omitted records  
21 reflecting that he had filed a second personal restraint petition. Dkt. 16.  
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23 On January 8, 2010, counsel for Respondent notified the court that the previously  
24 submitted relevant state court record may have inadvertently omitted records from a personal  
25 restraint petition (PRP) (Washington Court of appeals Case No. 36396-8-II) because the PRP  
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1 was listed in the state court database (ACORDS) as involving a Kitsap County case. Counsel  
2 has ordered the files for the PRP and after review, a motion to supplement the record and answer  
3 may be appropriate.

4 Accordingly, the court shall stay its consideration of Mr. Kirkwood's federal habeas  
5 petition pending notification from Respondent of the relevant state court record. The  
6 Respondent shall provide this court with an update regarding the status of the record **on or**  
7 **before March 12, 2010.**

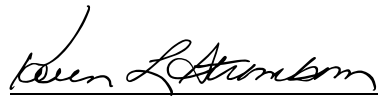
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9 It is **ORDERED**:

10 (1) The Clerk shall strike the December 18, 2009 noting date for consideration of Mr.  
11 Kirkwood's federal habeas petition.

12 (2) This matter shall be noted for an updated report by Respondent for **March 12,**  
13 **2010.**

14 (3) The Clerk shall send copies of this Order to Petitioner and counsel for  
15 Respondent.  
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17 **DATED** this 12th day of January, 2010.  
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21 Karen L. Strombom  
22 United States Magistrate Judge  
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